Modern Packaging Corp. *and* Local 6-1031, Paper, Allied Industrial, Chemical and Energy International Union, AFL-CIO. Case 7-CA-47663

December 16, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by the Union on July 12 and 26, 2004, and September 16, 2004, respectively, the General Counsel issued the complaint on October 6, 2004 against Modern Packaging Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On November 16, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On November 19, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by October 20, 2004, all the allegations in the complaint could be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 21, 2004, notified the Respondent that unless an answer was received by November 3, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with its principal office and place of business at 504 Huber Dr., Monroe, Michigan, has been engaged in the production and wholesale sales of cardboard folding cartons.

During the year 2003, a representative period, the Respondent, in conducting its operations described above, sold and shipped from its Monroe facility goods valued in excess of $50,000 directly to points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 6-1031, Paper, Allied Industrial, Chemical and Energy International Union, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Walt Houston	Owner
Bruce Weaver	General Manager
Cory Newman	Co-General Manager
Dan Danner	Chief Financial Officer

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, truck drivers, leaders, janitors and shipping and receiving employees at the Respondent's Monroe facility, but excluding all other employees such as office clerical, technical, professional, guards and supervisors as defined in the Act.

Since at least 1998 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 16, 2002 to May 23, 2004.

At all times since at least 1998, by virtue of Section 9(a) of the Act, the Union has been the exclusive representative of the unit for purposes of collective bargaining with respect to wages, hours of employment, and other terms and conditions of employment.

Since April 1, 2004, the Respondent has failed to continue in effect the health insurance benefits of the collec-

tive-bargaining agreement described above, while continuing to deduct premiums from unit employees' paychecks.

The term and condition of employment described above is a mandatory subject for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the Union's consent.

About June 8, 2004, the Union and the Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a successor collective-bargaining agreement, which was to remain in effect from June 1, 2004 through May 31, 2006.

Since about June 8, 2004, the Union has requested that the Respondent execute a written contract containing the agreement described above.

Since about June 8, 2004, the Respondent, through its agents Bruce Weaver, Cory Newman, and Dan Danner, has failed and refused to execute the agreement described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since April 1, 2004 to continue in effect the health insurance benefits of the collective-bargaining agreement, while continuing to deduct premiums from unit employees' paychecks, we shall order the Respondent to restore the employees' health insurance benefits and reimburse unit employees for any expenses ensuing from the Respondent's failure to continue the health insurance benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent has unlawfully failed and refused, since about June 8, 2004, to execute a written contract containing the agreement with the Union reached on that date, we shall order the Respondent to execute the agreement and give retroactive effect to its terms. We shall also order the Respondent to make whole the unit employees for any losses attributable to its failure to execute the agreement, as set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Modern Packaging Corp., Monroe, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 6-1031, Paper, Allied Industrial, Chemical and Energy International Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to continue in effect the health insurance benefits of the December 16, 2002—May 23, 2004 collective-bargaining agreement. The unit is:

> All full-time and regular part-time production and maintenance employees, truck drivers, leaders, janitors and shipping and receiving employees at the Respondent's Monroe facility, but excluding all other employees such as office clerical, technical, professional, guards and supervisors as defined in the Act.

(b) Refusing to execute a written contract containing the agreement reached with the Union on about June 8, 2004, on the terms and conditions of employment of the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' health insurance benefits and reimburse the employees for any loss of benefits or expenses ensuing from the Respondent's failure to continue the benefits since April 1, 2004, with interest, as set forth in the remedy section of this decision.

(b) Execute and implement a written contract containing the agreement reached with the Union on about June 8, 2004, containing terms and conditions of employment, give retroactive effect to the agreement, and make the unit employees whole for any loss of earnings and other benefits they have suffered as a result of the Respondent's failure to execute the agreement, with interest, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Monroe, Michigan, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 2004.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 2004

Wilma Liebman Member

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 6-1031, Paper, Allied Industrial, Chemical and Energy International Union, AFL-CIO, as the collective-bargaining representative of the employees in the following appropriate unit by failing to continue in effect the health insurance benefits of the December 16, 2002—May 23, 2004 collective-bargaining agreement. The unit is:

> All full-time and regular part-time production and maintenance employees, truck drivers, leaders, janitors and shipping and receiving employees at our Monroe facility, but excluding all other employees such as office clerical, technical, professional, guards and supervisors as defined in the Act.

WE WILL NOT refuse to execute a written contract containing the agreement reached with the Union on about June 8, 2004, on the terms and conditions of employment of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore the unit employees' health insurance benefits and reimburse the employees for any loss of benefits or expenses ensuing from our failure to continue the benefits since April 1, 2004, with interest.

WE WILL execute and implement a written contract containing the agreement reached with the Union on about June 8, 2004, containing terms and conditions of employment, give retroactive effect to the agreement, and make the unit employees whole for any loss of earnings and other benefits they have suffered as a result of our failure to execute the agreement, with interest.

MODERN PACKAGING CORP.